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CHEMICAL LAND HOLDINGS, INC.

October 26, 2000

U.S. Environmental Protection Agency, Region II
Emergency and Remedial Response Division
290 Broadway, 19th Floor, Room W-20
New York, NY 10007-1866

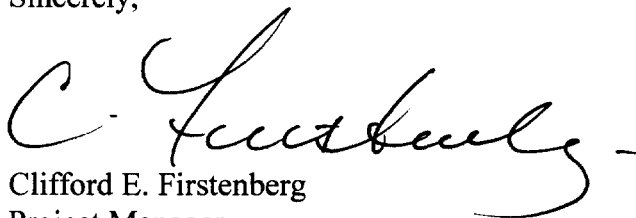
Attention: Ms. Janet Conetta
Strategic Integration Manager

Subject: Meeting Notes – Creel Angler Survey Meeting with Director ERRD
Passaic River Study Area
Administrative Order on Consent Index No. II-CERCLA-0117

Dear Ms. Conetta:

Please find enclosed notes of the meeting between representatives of the United States Environmental Protection Agency and Chemical Land Holdings, held on October 4, 2000 at EPA's office in New York, NY.

Sincerely,



Clifford E. Firstenberg
Project Manager
On behalf of Occidental Chemical Corporation
(as successor to Diamond Shamrock Chemicals Company)

enclosure

(2 copies sent)

Copy to:

C. Dinkins (V&E)	R. Caspe (USEPA – Region 2)
B. Finley (Exponent)	S. Jaffess (USEPA– Region 2)
D. Rabbe (CLH)	P. Hick (USEPA – ORC)
N. Wilson (ND Wilson Assoc.)	D. Karlen (USEPA – ORC)
T. Wolfskill (Wolfskill Engineering)	B. McCabe (USEPA– Region 2)
	M. Olsen (USEPA– Region 2)

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J. Conetta
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2c: Section Chief
NJDEP-Bureau of Federal Case Management
401 East State Street - CN 028
Trenton, NJ 08625-0028
Attn: Jonathan D. Berg

1c: Chief, New Jersey Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 19th Floor, Room W-20
New York, NY 10007-1866
Attention: Diamond Alkali Site Attorney - Passaic River Study Area

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MEETING NOTES
Creel Angler Survey
Meeting with Director ERRD
October 4, 2000
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Attendees

Chemical Land Holdings

C. Dinkins (Counsel)
C. Firstenberg (CLH)
B. Finley (Consultant)
D. Rabbe (CLH)
N. Wilson (Consultant)
T. Wolfskill (Consultant)

U.S. EPA

R. Caspe (USEPA – Region 2)
J. Conetta (USEPA– Region 2)
S. Jaffess (USEPA– Region 2)
P. Hick (USEPA – ORC)
D. Karlen (USEPA – ORC)
B. McCabe (USEPA– Region 2)
M. Olsen (USEPA– Region 2)

Mr. Rabbe stated the purpose of the meeting: to discuss EPA's decision to forego the Creel Angler Survey (CAS). CLH has spent more than \$15 million to comply with the Administrative Order on Consent (AOC), including \$5 million for the Ecological Sampling Plan (ESP) implementation. EPA's remedy decision must be based on sound science and must be defensible. Whatever solution is developed for the river will be multi-faceted, including restoration. Mr. Rabbe explained that he was at the AOC negotiations, and that since the AOC allowed for an ESP with a decision point to ensure that sound science would be applied, this was material inducement for CLH to agree to the AOC.

Ms. Dinkins reviewed background.

- The AOC specifies the need for site-specific data, including a CAS - reference the AOC citation of "local fishing habits." The Screening Level Human and Ecological Risk Assessment (SLHERA) prepared under the AOC led EPA to identify "local fishing habits" as a data gap.
- Region 2 has consistently required site specific data until now. Failure to collect site-specific data is inconsistent with the NCP ("shall consider...site specific data needs").
- EPA's current position is unsupportable and, ultimately, if challenged, will be unsustainable

Mr. Rabbe explained that Mr. Caspe's Sept. 14, 2000 letter was a succinct statement of EPA's position: that a survey conducted under CLH's CAS Work Plan would not support a risk assessment and that new information exists that was not previously available. However, CLH believes that EPA's new information is neither "new" nor site specific, and the CAS being conducted under the work plan definitely will support a risk assessment. CLH addressed these items in reverse order.

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Ms. Dinkins explained that EPA's default values are not site-specific and do not fit the Passaic River. These concerns were addressed in Ms. Dinkins' letter to Ms. Hick in June 2000.

- Studies that form the basis of EPA's default consumption rates are not applicable to the Study Area because they cover different types of fisheries (i.e., not urban, not estuarine, not a single waterbody).
- These studies were also affected by advisories in whole or part (i.e., like the Passaic).
- There are no applicable exposure durations because the default exposure durations do not apply to fishing duration.
- The default rates do not apply to crab consumption.

Ms. Dinkins, saying that the default values were not new information, reviewed the chronology of their development.

- The studies used in the Exposure Factors Handbook to develop the default rates all predate 1995.
- CLH knew about these studies before it agreed to conduct the CAS, as EPA likely did also.
- CLH did not suggest using these studies because they are so dissimilar to the location of and conditions in the Passaic River Study Area.

Ms. Olsen suggested that CLH speak with Dr. K. Kirk Pflugh regarding her studies in the Passaic River Study Area. EPA explained that, contrary to previous information provided by Dr. Kirk Pflugh, she *did* have survey stations in the Study Area.

CLH disagreed, explaining that it had had discussions with EPA and Dr. Kirk Pflugh and she did not have stations in the Study Area. In addition, CLH has been requesting the data from Dr. Kirk Pflugh for many years, both directly and through EPA, and the data have never been provided. Finally, the objective of Dr. Kirk Pflugh's studies was community outreach, so useful ingestion rates can not be developed from this dataset in any event.

Mr. Rabbe advised EPA that CLH is so firmly committed to the need for this site-specific data that it will spend nearly \$1 million to complete the CAS, even without EPA approval.

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Ms. Wilson explained some of the technical issues related to the CAS, emphasizing its importance to the risk assessment, and that conduct of the CAS is the only technically-defensible means by which to support the risk assessment.

Ms. Wilson addressed the issue of advisories affecting the CAS, as raised in EPA's April 27, 2000 letter. Ms. Wilson summarized CLH's response, which pointed out that only one study has ever measured the effect of advisories on consumption rates, and it found that the effect was trivial. In addition, EPA's proposed default consumption rates are based on studies that are, like the Passaic, affected in whole or in part by advisories. There are a number of examples of CERCLA risk assessments that were based on angler survey data collected from waterbodies affected by advisories, and none of these surveys was as intensive as the CAS being conducted by CLH. CLH's CAS will be one of the most intensive ever conducted.

Mr. Caspe asked if CLH had responded to EPA's comments on the CAS Work Plan. Mr. Firstenberg explained that this same question was raised at the May 23, 2000 meeting. Since that time, CLH confirmed that the draft CAS Work Plan was modified to respond to both to EPA's 1996 and 1999 comments. Further, following the May 23, 2000 meeting, CLH prepared separate comment/response documents for each set of comments, and submitted these to EPA. CLH has had no subsequent response from EPA regarding these documents.

Ms. Olsen expressed concern that CLH's plan does not include reaching out to the local community. Ms. Dinkins observed that this comment goes to community involvement, not the structure or content of the CAS Work Plan. She and Mr. Firstenberg then clarified the issues related to community involvement:

- One of EPA's previously stated concerns regarding community involvement was that CLH would not know all of the fishing locations and would not get cooperation from the local anglers.

CLH knows this stretch of river better than anyone else due to the many years that it has been working on the river. In addition, in the latest design of the CAS, there is a team dedicated only to counting anglers within the Study Area; consequently, there is no way that anglers can not be observed by the enumeration team.

- Lack of participation in the survey due to lack of community outreach.

As of the date of the meeting, the response rate of first-time interviewees was 90%. Most surveys of this type are considered successful with 60% response. So the issue of cooperation has been demonstrated not to be of concern.

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- In addition, CLH pointed out that widespread community outreach could actually bias the results of the survey and would therefore be counterproductive.
- Lastly, CLH involved community residents in pretesting the survey instruments and then used the results of this pretesting to refine the CAS Work Plan. She reported that the pretest program included one-on-one interviews in English, Spanish, and Portuguese to assess the clarity and cultural appropriateness of the survey protocols and instruments. This is the most effective form of community involvement without imparting bias by reaching out to community groups to elicit cooperation (which is not needed, based on the results to date) and which would likely bias the results.

Ms. Wilson summarized the issue of community outreach by describing how the pretests were conducted in local community centers, and that participants were selected from residence lists for the local community.

Ms. Wilson further summarized the survey statistics to-date, and explained how the implementation of the CAS was modified to account for the results of the pretest.

- The CAS has achieved a tremendous result of 90% exit interview success rate for August – this is almost “unheard of” in the industry. The success rate may obviously change, but so far the result is excellent.
- Half of the interviewed anglers are not aware of advisories (and thus cannot be affected by them).
- Only one angler indicated that he ate fewer fish due to health warnings.
- No anglers indicated that they fished or crabbed less often due to advisories.

EPA asked about the version of the CAS Work Plan that it has. CLH explained that the CAS Work Plan had not yet been updated to reflect changes made as a result of the pretests, but that EPA would be provided a copy when it was.

Ms. Olsen restated her concern over a “trust issue” because the community was not involved. She referred to EPA guidance that requires community involvement. Dr. Wolfskill explained that CLH makes presentations to the Community Action Group (CAG) upon invitation from EPA, and would do so regarding the CAS if requested.

Mr. Rabbe advised EPA that CLH is convening a panel of experts to review the CAS Work Plan. They will meet for the first time next week. They will review the history of the CAS, including all project correspondence; determine whether a site-specific CAS is required to complete a thorough risk assessment for this site; review the current work plan and execution of the field activity; and tour the River, all to determine whether CLH is conducting an appropriate survey. These experts are nationally and internationally renowned, including former government officials, academics, and creel/angler experts,

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with the expertise essential for evaluating a CAS to support a human health risk assessment. The results of their review will be published and available early next year.

Dr. Wolfskill reviewed the ramifications of EPA's current decision (i.e., to disallow the CAS for the risk assessment). He stated that the risk assessment must be both defensible, and reliable for other purposes. The current course will produce a questionable risk assessment due to a lack of scientific integrity because (1) the risk assessment will not be based on site-specific data and therefore, the results cannot be considered representative, and (2) the publicly available CAS results (i.e., the CAS that CLH is conducting outside of EPA's cooperation) will likely document serious flaws in EPA's risk assessment.

The CAS being conducted by CLH is the most intensive that has ever been conducted, and will therefore be unassailable. Per the NCP, site-specific data are needed for remedy selection. If EPA's risk assessment is not based on site-specific data, it may be challenged by another risk assessment at the end of the process.

Mr. Caspe asked the EPA staff if the CAS could be modified to make it acceptable to EPA. Ms. Olsen said she could not answer this because she has not seen the latest CAS Work Plan, but stated that she is still concerned about community outreach. CLH explained, again, its position regarding community outreach, and further explained that the pretest activities may provide Ms. Olsen with a greater sense of comfort regarding community outreach.

Ms. Olsen raised the issue of the Kirk Pflugh studies that she claims were conducted in the Study Area and suggested there is no need for additional investigation. CLH pointed out that it was determined at the May 23, 2000 meeting that included Dr. Kirk Pflugh, that none of her sampling locations was within the Study Area. Ms. Hick explained that subsequent discussion among EPA/NJDEP concluded that Dr. Kirk Pflugh had one or more sampling locations within the Study Area. CLH said again that it has requested additional information and data from Dr. Kirk Pflugh, which could clear up this issue, but has never received it. Also, Dr. Kirk Pflugh's study was not intended to provide data for a risk assessment, so it is not appropriate to consider her survey sufficient for the purpose at hand.

Mr. Caspe raised the issue of catching crabs at night, because it was made clear that CLH is not surveying at night due to safety concerns. Mr. Caspe noted that this may need to be considered if EPA is to reverse its decision regarding the CAS.

Mr. Caspe asked EPA staff about oversight for the CAS, and Ms. Conetta explained that they would probably have oversight activities 40% of the time. Mr. Rabbe committed that CLH is absolutely willing to cooperate with EPA.

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Ms. Jaffess asked about angling outside of the six-mile Study Area. CLH responded that due to the requirements of the AOC, and to preserve its rights under cost recovery, CLH is not investigating activities outside of the Study Area. Other studies or default values may be used for these areas when needed.

ACTION ITEMS

- CLH to prepare notes of the meeting.
- CLH to begin submitting new materials related to the CAS and CAS Work Plan to EPA.
- EPA will provide its response within a couple of weeks.
- EPA will request additional information from CLH.

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